

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT LIRA**  
**CRIMINAL SESSION CASE NO. 0008 OF 2015**

**UGANDA :::::::::::::::::::::::::::::::::::::: PROSECUTOR**

**VERSUS**

**AWINO EVERLINE :::::::::::::::::::::::::::::::::::::: ACCUSED**

**BEFORE: HON. JUSTICE DUNCAN GASWAGA**

**RULING ON NO CASE TO ANSWER**

[1] This is a ruling on a submission of “**no case to answer**” by the defence. The accused stands charged with two counts of the offence of murder C/S 188 & 189 of the PCA.

**Count I:** The particulars allege that **Awino Everline** on the 3<sup>rd</sup> day of April, 2015 at Odike village, Loro sub-county in the Oyam District murdered **Amongi Susan Betty**.

**Count II:** The particulars allege that **Awino Everline** on the 3<sup>rd</sup> day of April 2015 at Odike village, Loro sub-county in the Oyam District murdered **Aweli Prisca**. The ingredients of the said offence are;

- (i) *That death occurred to a human being.*
- (ii) *That the death was caused by an unlawful act or omission,*



**(iii) That the death was caused with malice aforethought.**

**(iv) That the accused participated in causing the death or caused the death.**

[2] A submission of no case to answer may be made and upheld in two situations;

**(a) where there has been no evidence to prove an essential element/ ingredient in the alleged offence.**

**(b) when the evidence adduced by the prosecution has been so discredited as a result of cross-examination or is so manifestly unreliable, that no reasonable tribunal could safely convict upon it.**

[3] Though it is incumbent on the prosecution to prove the guilt of the accused person beyond reasonable doubt, at this point of the trial, the court is only obliged to make a finding whether a *prima facie* case has been established against the accused person to require her to make a defence and if not, to acquit her immediately. It should be emphasized that at this point the court is only concerned with the quality of the prosecution evidence adduced to maintain the charges.

[4] The prosecution and defence agreed on and admitted into evidence; *the exhibit slip dated 04/04//2015, PF 48C – post-mortem report for Amongin Betty, PF48B for Aweri Prisca, PF24 for Awino Everline (the accused), sketch map of the scene of crime dated 03/04/2015 and 2 photographs of the scene of crime. A memorandum of agreed facts was as well tendered into evidence. The documents tendered in were marked PE1, PE2, PE3, PE4, PE5, PE6, PE7 respectively.*



- [5] The prosecution called evidence of 3 witnesses. **PW1 Tereza Akoli** stated that the accused, her biological daughter burnt her deceased daughter in her hut together with her child on 03/04/2015. That she was informed about the incident by the area chairman. That the deceased was rushed to hospital because she was still talking whereas the child burned to ashes. She believes it was accused who killed the deceased because there was a land dispute concerning the land that she owned with her husband and intended to sell the land and go construct a house elsewhere. All the children had agreed to this arrangement including the accused who later on refused and uttered threats that she was going to burn the deceased. That the accused and deceased were sisters who related well until the issue of the land arose and they drifted apart. She confirmed that the accused had killed the deceased because CID had informed them that she stated the same while making a statement at hospital. That the accused had no grudge with any of her siblings.
- [6] **PW2 Akite Molly** stated that her and the accused stayed in the same trading centre and that one day while the accused was passing by her house going to fetch water, she heard her say that she would do something bad since her mother had dragged her to LCIII Court. That the following day she was informed that the accused's sister had been burnt in the house. **PW3 Okullu Vincent** stated that on 02/04/2015 he woke up to fire burning the deceased's house between 11:00pm to midnight and he responded to the fire. That the house was burning and collapsing but the child was nowhere



to be seen. Amongi was standing in the compound confused and her body completely burnt. That she kept saying "*my sister you have burnt me because of a land dispute*" that "*my sister you have killed me, my sister everline you have killed me because of a land dispute*". That when he returned the next day he found they had taken the deceased to hospital. That he was unaware of any land dispute. He did not make a statement in the case and he doesn't know who burnt the house.

- [7] The defence submitted that **PW1** and **PW2** testified to the death of the accused but not to who caused the death. That **PW3** was lying about being at the scene yet he wasn't and as such the accused should be exonerated. The prosecution on the other hand contended that the evidence of threats and the dying declaration were enough to convict the accused person.
- [8] I have diligently perused the evidence on the record so far as well as the contradictions pointed out by the defence. PW1 and PW2 seem to rely on the threats earlier on made by the accused person towards her mother. None of these though, place the accused at the scene of crime. PW3 on the other hand insists that the deceased (**Betty Amongin**) made a dying declaration in the night when the house was burning and they had gone to rescue her. There has been no further statement about the dying declaration since even the statement purportedly recorded at the hospital by the Criminal Investigation Department officers of the police force was not presented in court and no reasons or excuse at all

was given. Yet, PW1's conviction about the accused being the murderer of Betty Amongin solely bases on the alleged statement. There were further contradictions on the part of PW3 who insisted that he did not make a statement at police whereas there was a statement on court record. Even when shown his own statement and signature thereon by the prosecutors, which had also been disclosed to the defence Counsel, he still denied having made it. One wonders why he was disowning his own statement if it was not adverse to the prosecution case. This greatly puts the credibility of this particular witness in issue.

- [9] On the whole, there is no direct evidence at all connecting the accused to the offence. This leaves the court with only circumstantial evidence which includes the following pieces: threats allegedly made to the mother but not necessarily to the deceased persons, the existence of a land dispute which was not clearly pronounced since the accused had donated her signature in respect of the land transaction to pave way for her mother to sell part of the land left by their father and build a house elsewhere; and finally the alleged dying declaration which does not fit the bill. Even if tied and considered together, these pieces of evidence are so weak and worthless.
- [10] Therefore, I find that the evidence connecting the accused person to the crime, if at all, is so thin on the record. However, the suspicion of the accused's involvement is very high. Be that as it may, however high the suspicion may be, it can never result into a conviction. The evidence on record has

been discredited by cross examination and inconsistencies which go to the root of the case and thereby leaves a lot of doubt in the mind of the court. This doubt shall be resolved in favour of the accused.

- [11] Resultantly, the prosecution has failed to prove the element/ ingredient of participation of the accused in the offence herein. Therefore, the accused cannot be put to her defence. The charges are hereby dismissed and the accused acquitted on both counts. She should be released from custody immediately.

Dated, signed and delivered at Lira this 03<sup>rd</sup> day of  
November, 2022.



Duncan Gaswaga

JUDGE